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Since the decision in the Miller case, our legislature has acted and we now have a clear statutory provision requiring deductions of both federal and state taxes.<sup>51</sup> While that provision is merely declaratory of the Miller case, it is more desirable to have it resting on an express legislative pronouncement than on judicial legislation.

*T. W. D.*

<sup>51</sup> Inheritance Tax Act § 2, Cal. Stats. 1921. (Senate Bill No. 175), Chap. 821. (10): "In determining the market value of the property transferred, the following deductions and no others shall be made from the appraised value thereof: . . . .

(e) The amount due or paid the government of the United States as a federal inheritance or estate tax . . . .

(f) The amount due or paid any state or states of the United States (excepting California) as a state inheritance, succession or transfer tax. . . ."

## Book Reviews

A TREATISE ON THE FEDERAL ESTATE TAX. By Raymond D. Thurber. Matthew Bender & Company, Albany, N. Y., 1921, pp. xvi, 423.

This book is a pioneer in its field. There are several standard works on the inheritance taxes imposed by the various states, but as yet the Federal Estate Tax is too little known, either in theory or practise, to have received any definite and comprehensive formulation.

The Federal government has on previous occasions resorted to death duties as a source of revenue. Such taxes were imposed during the Revolutionary War, the Civil War, and the Spanish War. These were all regarded as temporary war emergency measures and were repealed as soon as the pressure of war was removed. The present Federal Estate Tax, first introduced in 1916 (amended twice in 1917 and re-enacted in 1918) also had its origin in a war emergency, being necessitated by the failing revenue owing to the World War. But the prospect is that it will outlive the immediate emergency. Furthermore, it is not, like previous Federal taxes, a legacy tax. It is, as the Act explicitly declares, an estate tax levied on the entire estate of the decedent without reference to the beneficiaries or their respective shares. Because the continued existence of this tax is practically insured and also because of its fundamental difference in theory from other death duties, the subject of this book is of great interest to the profession.

However, in compiling this book the author labored under the serious disadvantage of lack of authoritative material. At the time of its going to press, no case directly bearing on the Act had been decided by the U. S. Supreme Court. *N. Y. Trust Co. v. Eisner*, — U. S. —, 41 Sup. Ct. Rep. 506, which holds that the tax is not an interference with the state's powers, nor a direct tax,

and which is the leading case on the constitutionality of the Act, was decided only in May of this year. Furthermore, the whole Act fairly bristles with doubtful questions that will necessarily remain purely speculative until presented to the courts for determination. Mr. Thurber, to offset this dearth of judicial decision directly in point, has included copious citations of decisions from the closely related field of inheritance tax law. He has also incorporated the Regulations and Decisions of the Bureau of Internal Revenue. While helpful, such rulings will scarcely be accepted by lawyers as *ex cathedra*.

At page 61 of his book the author apparently intimates that *Blum v. Wardell* (Dist. Ct., N. D. Cal. Rudkin, D. J., 1920) 270 Fed. 309, is authority for the proposition that the wife no longer takes her share of the community property in this state as heir. Even though the Bureau of Internal Revenue accepts that decision as final authority for the non-taxability of the wife's interest in the community under the Federal estate tax, it is highly doubtful whether the legislation involved in the case changes the character of the wife's interest in the community property in this state. An enactment in a transfer tax law, expressly limited to "the purposes of this Act," could hardly be taken to work a change in the general property law of the state.

*T. W. Dahlquist.*

A TREATISE ON THE LAW OF NATIONAL AND STATE BANKS. By H. W. Magee. Matthew Bender & Company, Albany, N. Y., 1921. pp. lxxxv, 1138.

In a review of the first edition of this work comment was made on the fact that the book was not a paraphrase or digest with an abundant citation of authority on self-evident rules, but was an original contribution with individual comment. The lawyer will find scanty discussion of some problems which interest him in view of the fact that they come before the courts, for example, trust receipts, escheat of bank deposits, "blue sky" laws, but he will find a full discussion of practical questions in banking, such as the amendment of bank charters, the duties of a paying teller, tests for detecting the genuineness of coin and notes, the education a bank president should have, the advisability of restriction of loans to officers, etc. The merit of a book of this kind is that it gives so much practical law that cannot be found in the reports. The liability of the stockholders of a California corporation would have been made clearer by a reference to *Gardiner v. Bank of Napa*, 160 Cal. 577, 117 Pac. 667.

*A. M. Kidd.*

FEDERAL CRIMINAL LAW AND PROCEDURE. By Elijah N. Zoline. Little, Brown & Company, Boston, 1921. pp. Vol. I, pp. cxxxi, 505; Vol. II, xi, 730; Vol. III, vii, 783.

In the first volume is the entire body of the Federal law relating